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June 17, 1994

VIA FEDERAL EXPRESS

Clerk of the Court
Middlesex County Superior Court
Middlesex County Courthouse
One Kennedy Square
New Brunswick, New Jersey 08903-0964

Re: City of Perth Amboy v. Madison Industries
State of New Jersey Department of Environmental
Protection v. CPS Chemical Company, Inc.
Docket No. L-4476-76 and C-28115-76

Dear Sir/Madam:

We are counsel for plaintiff, the City of Perth Amboy in the above matter. I enclose an original and one copy of the following:

- (1) Notice of Motion for Leave to Amend Complaint;
- (2) Certification of Sheryl L. Newman;
- (3) Certification of Jeffrey G. Kramer
- (4) Brief;
- (5) Amended Complaint
- (5) Proposed form of Order;

Also enclosed is our check in the amount of \$15 for your filing fee. Please stamp a copy of each document "filed" and return a copy to me in the enclosed envelope.

Very truly yours,


Sheryl L. Newman

cc: Honorable C. Judson Hamlin (By Hand)
Service List (By Federal Express)

507649



Service List

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Attorneys for Plaintiff
City of Perth Amboy

-----x	:	
City of Perth Amboy,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	MIDDLESEX COUNTY
	:	
v.	:	DOCKET NO. L-4476-76 and
	:	C-28115-76
Madison Industries,	:	
	:	
Defendant.	:	SPECIAL ENVIRONMENTAL CASE
	:	
-----x	:	
State of New Jersey	:	
Department of Environmental	:	
Protection,	:	
	:	
Plaintiff,	:	
	:	
v.	:	NOTICE OF MOTION FOR
	:	LEAVE TO AMEND COMPLAINT
CPS Chemical Company, Inc.,	:	
	:	
-----x	:	

TO: Attached Service List

PLEASE TAKE NOTICE that on July 22, 1994 at 9:00 a.m. or as soon thereafter as counsel may be heard, McManimon & Scotland, counsel for plaintiff City of Perth Amboy will apply to the Honorable C. Judson Hamlin at the Superior Court of New Jersey, Law Division, Middlesex County, New Brunswick, New Jersey for an order granting the City of Perth Amboy leave to file an amended complaint in this action.

PLEASE TAKE FURTHER NOTICE that in support of the plaintiff's motion, the plaintiff will rely on the Certifications

of Jeffrey G. Kramer and Sheryl L. Newman, the brief and the Rules of Court. A proposed form of order and amended complaint are also submitted herewith.

McMANIMON & SCOTLAND
One Gateway Center, Suite 1800
Newark, New Jersey 07102
(201) 622-1800
Attorneys for Plaintiff
The City of Perth Amboy

By: 

Joseph J. Maraziti, Jr.

Dated: June 15, 1994

CERTIFICATION OF SERVICE

I, Teresa Baldino, hereby certify that on June 17, 1994, I served the within Notice of Motion, Certifications of Jeffrey G. Kramer and Sheryl L. Newman, supporting brief, amended complaint and proposed form of Order on the parties on the service list by Federal Express Overnight Delivery.

Teresa J. Baldino
Teresa J. Baldino

Dated: June 17, 1994

-----X	:	
City of Perth Amboy,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	MIDDLESEX COUNTY
	:	
v.	:	DOCKET NO. L-4476-76 and
	:	C-28115-76
Madison Industries,	:	
	:	SPECIAL ENVIRONMENTAL CASE
Defendant.	:	
-----X	:	
State of New Jersey	:	
Department of Environmental	:	
Protection,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CPS Chemical Company, Inc.,	:	
	:	
Defendant.	:	
-----X	:	

**PLAINTIFF, CITY OF PERTH AMBOY'S BRIEF IN SUPPORT
OF ITS MOTION FOR LEAVE TO AMEND THE COMPLAINT**

MCMANIMON & SCOTLAND
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Attorneys for plaintiff,
City of Perth Amboy

On the Brief:
Joseph J. Maraziti, Jr., Esq.

Of Counsel:
Sheryl L. Newman, Esq.

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<u>N.J.S.A.</u> 58:10A-1 <u>et seq</u>	1

PROCEDURAL HISTORY

In 1976 and 1977, the Department of Environmental Protection, now the Department of Environmental Protection and Energy, (the "DEPE") and the City of Perth Amboy ("Perth Amboy") filed complaints against Chemical & Pollution Sciences, Inc. ("CPS") and Madison Industries, Inc. ("Madison") for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

About October 16, 1981, the Honorable David Furman determined that volatile organic chemical discharges from the Madison site had entered the groundwater and surface waters of nearby Pricketts Brook, resulting in the contamination of the Runyon Watershed. The court held CPS and Madison severally liable for the contamination and ordered the DEPE to implement a remedial plan to clean up the contamination.

CPS, Madison, Perth Amboy and the DEPE appealed the trial court decision. About April 21, 1983, the Appellate Division affirmed the decision regarding the remedial plan, but reversed the decision which found the defendants only severally liable for a limited amount of money. The Appellate Division determined that CPS and Madison were jointly and severally liable for the actual costs of cleanup and removal of the volatile organic and metal contamination. About June 14, 1983, an order was entered conforming to the Appellate Division decision (the "1983 Order").

About September 12, 1985, the DEPE filed a motion with the trial court seeking approval of an alternate remedial plan to that

set forth in the 1983 Order. After reviewing results of additional testing, the Honorable John E. Keefe determined that the remedial measures mandated by the 1983 Order were unsound.

About April 27, 1988, the court entered a new order amending the terms of the 1983 Order, and consented to by Arnet Realty¹, requiring the defendants to implement an alternative remedial program and post financial assurance to guarantee compliance (the "1988 Order").

By 1992, CPS and Madison had not complied with the remedial program set forth in the 1988 Order. As a result of their non-compliance, significant levels of contaminants migrated beyond the capture zone and further threatened Perth Amboy's water supply. Therefore, about April 16, 1992, Perth Amboy filed an Order to Show Cause against Madison and CPS seeking supplemental relief enforcing litigant's rights to compel the capture and control of the entire contaminant plume.

The Honorable C. Judson Hamlin found that the failure of the defendants to comply with the 1988 Order constituted a priority matter concerning public health and welfare, and involved an actual or potential clear and present danger to the water supply and the residents of Perth Amboy. About May 15, 1992, the DEPE also filed a Motion in Aid of Litigant's Rights seeking enforcement of the 1988 Order.

¹ Arnet Realty is a partnership which owns the site on which Madison, and others, operate.

After visiting the site and an extensive trial, Judge Hamlin determined that CPS and Madison had not controlled or captured the entire contaminant plume for which they were responsible. Judge Hamlin held that the defendants failure was a clear violation of the 1988 Order and not consistent with reasonable and anticipated common sense. The court concluded that absent immediate and continuous action, Perth Amboy's water supply was seriously jeopardized by the failure of CPS and Madison to capture and control the contaminant plume emanating from their respective facilities. About July 2, 1992, Judge Hamlin entered an order modifying the 1988 Order (the "1992 Order"). The 1992 Order sets forth a remediation schedule, vests management and control of the remediation activities with the DEPE and requires each defendant to deposit \$1,000,000 into an escrow account from which the DEPE could withdraw funds to pay for costs incurred in implementing the 1992 Order.

CPS and Madison appealed Judge Hamlin's order and were denied a stay pending the appeal. The Supreme Court also denied the defendants motion for a stay. Madison then moved to modify and clarify its financial obligations under the 1992 Order, contending they were financially unable to comply. This was denied. Madison renewed its request to modify, which motion was also denied. About November 19, 1992, Madison filed a second amended notice of appeal of the 1992 Order to include an appeal of Judge Hamlin's denial of its motion to modify.

About November 24, 1992, Madison filed for protection under Chapter 11 of the United States Bankruptcy Code. About March 3, 1993, the Bankruptcy Court lifted the automatic stay to permit the appeals to proceed. To date, there has been oral argument, but no decision. Pursuant to the rights accorded creditors under the Bankruptcy Code, Perth Amboy pursued vigorous discovery of Madison, its affiliates and insiders.

As a result of the discovery conducted in the Bankruptcy matter, Perth Amboy now moves to amend its complaint to include additional parties and claims under the Spill Act, for negligent and/or tortious acts or omissions and pursuant to the Environmental Rights Act.

STATEMENT OF FACTS

The matter against CPS and Madison arose out of groundwater contamination of the Runyon Watershed which is located in Old Bridge Township, New Jersey. Perth Amboy operates several water supply wells in the Runyon Watershed from which it pumps, treats and transports water to its residents.

CPS and Madison are located on adjacent properties in Old Bridge Township, on the edge of the Runyon Watershed and upgradient to Perth Amboy's water supply wells. CPS and Madison are industrial establishments that process and produce substantial amounts of organic and inorganic substances. Their chemical processing facilities are located adjacent to the affected aquifer that supplies Perth Amboy its drinking water and along Pricketts Brook, which is just upstream of Perth Amboy's well field and waterworks.

Pricketts Brook flowed from beyond the defendants' sites and discharged into Pricketts Pond. Pricketts Brook and Pricketts Pond are responsible for feeding, or "recharging", the water to the Old Bridge and Farrington Sands aquifers that comprise the Runyon Watershed.

Madison operates its business at old Waterworks Road, Old Bridge Township, New Jersey (the "Facility"). See Certification of Jeffrey G. Kramer. The Facility is owned by Arnet Realty Co. Also operating on the Facility are several companies affiliated with Madison Industries - Madison Chemical Corp., Old Bridge Chemicals Co. Inc., Old Bridge Metals & Chemicals Co. Inc. Recently, despite

their legal fictions, it was discovered that Madison and its affiliated companies (the "Corporate Defendants") operate as a single enterprise. The officers and shareholders of the Corporate Defendants are identical. The Corporate Defendants share employees. The Corporate Defendants have a single union contract. The Corporate Defendants allocate various overhead items, including rent, ratably among each other. There are no distinct corporate minute books or stock transfer ledgers. There is no indication that there are statutory officers and directors or shareholders' meetings. The registered agent for each of the Corporate Defendants is located at Old Waterworks Road, Old Bridge, New Jersey. See, Cert. of Kramer and Certification of Sheryl L. Newman.

ARGUMENT

PLAINTIFF, CITY OF PERTH AMBOY, SHOULD BE GRANTED LEAVE TO AMEND THE COMPLAINT.

Plaintiff, the City of Perth Amboy, seeks an order of this Court permitting it to amend its complaint to include additional parties and claims for environmental contamination.

In general, Rule 4:9-1 permits a party to amend a pleading "by leave of court which shall be freely given in the interest of justice." Motions for leave to amend are to be liberally granted without consideration of the ultimate merits of the amendments. See Tomaszewski v. McKeon Ford, Inc., 240 N.J. Super. 404, 411 (App. Div. 1990).

The rules do not prescribe a specific time limit for the amendment of pleadings. It is left to the sound discretion of the Court to determine whether the right of amendment should be denied. Hudson Foam Latex Products, Inc. v. Aiken, 82 N.J. Super 508, 517 (App. Div. 1964). The rules even provide for amendments to pleadings during the course of trial or after judgment (Rule 4:9-2) and allow amendments for new claims and parties, which relate back to the original pleading. See Rule 4:9-3. Here, the court should exercise its discretion and grant Perth Amboy leave to amend the complaint.

The parties sought to be included in this action operate as one cohesive, economic unit with the original defendant, Madison. As such, they should be held responsible for releasing hazardous substances into the environment. While the complaint against

Madison was instituted about 1976, the single enterprise activities among Madison and its affiliates was only recently discovered after documents regarding the affiliate companies were made available to the plaintiff pursuant to subpoenas issued in the bankruptcy case filed by Madison. The interests of justice mandate that Perth Amboy be granted leave to amend its complaint to include parties liable for releasing hazardous substances into the environment.

The evidence clearly indicates that the separate corporate entities in reality constitute one integrated enterprise. Generally, in determining whether a single economic unit is present, courts consider common ownership, common management and functional integration of operations. See, e.g., Taca Int'l Airlines, Inc. v. Rolls-Royce Ltd., 84 N.J. Super 140, 147 (Law Div. 1964) and Environmental Tectonics v. W.S. Kirkpatrick & Co., 659 F. Supp 1381, 1388 (D.N.J. 1987). In Taca Int'l, the defendants guaranteed lines of credit for each other, shared personnel, had identical boards of directors, had integrated operations and used identical training grounds. As a result, the court determined that the defendants acted as one cohesive, economic unit.

Similarly, in this case, there is common ownership, common management and functional integration of operations of the Corporate Defendants. The Corporate Defendants all operate at the same facility at Old Waterworks Road, Old Bridge, New Jersey; the shareholders and officers are identical; the principal business activities are identical; expenses are allocated among the

companies based upon sales, by adjusting journal entries from one company to another; there is one union contract; one insurance policy is issued for the Corporate Defendants; rent is allocated among the companies based upon sales, although the only written lease is between Arnet and Madison; there are no distinct corporate minute books or stock transfer ledgers. See Cert. of Kramer and Cert. of Newman. The intimate relationship between the Corporate Defendants mandates the conclusion that the operations are a cohesive, economic unit and each should be jointly and severally liable for the injuries to the environment. See Dunley v. Martin Dennis Co., 30 N.J. Super 446 (Law Div. 1954) where liability was imputed to parent company for injury caused by a subsidiary, because the parent owned all the stock of the subsidiary, the officers and directors were identical and the companies shared the same address. See also Hoagland v. Springer, 75 N.J. Super 650 (App. Div. 1962); Cintron v. W & D Machinery Co., 182 N.J. Super 126 (Law Div. 1981); and City of Paterson v. Fargo Realty, 174 N.J. Super 178 (Passaic County Ct. 1980).

Not only are the affiliated companies liable for the damages caused by the release of the hazardous substances into the environment, but the principals of those companies should also be held accountable. In Ciaudelli v. City of Atlantic City, 268 N.J. Super. 439 (App. Div. 1993), the Appellate Division affirmed the allowance of an amended complaint joining a principal of the original defendants. The court noted that there was a "unity of interests" of the defendants. "The conditions for joining a new

party are satisfied here because . . . [the defendant] and his principal . . . obviously had received such notice of the institution of the action" Id. at 444. See also Tomaszewski, supra. (agents and principals may be joined).

As stated earlier, the officers and shareholders of the Corporate Defendants are identical. These officers and shareholders control or have the ability to control the activities of the Corporate Defendants at the Facility. This control includes environmental matters. "[I]t is highly desirable that all parties with a material interest, one that can affect or be affected by the judicial outcome of a legal controversy, should participate in its litigation." Burrell v. Quaranta, 259 N.J. Super. 243, 248 (App. Div. 1992).

There is no question that the circumstances surrounding the operation of the Corporate Defendants establishes a systematic amalgamation of identical interests. From the identical officers and shareholders, employees and place of operations, the allocation of expenses based on sales, single union contract and insurance policy, and absence of written agreements typical of arms length transactions, the "separateness" of the Corporate Defendants is, at best, tenuous. To protect the public health, welfare and safety from further environmental contamination, this Court should grant Perth Amboy leave to amend its complaint to include parties liable for the release of hazardous substances.

The liberal allowance of amendments is particularly important where the public interest is at issue. In Springfield Tp. v. Board

of Educ., 217 N.J. Super. 570 (App. Div. 1987) the court permitted a late amendment adding an issue regarding a restrictive covenant on the sale of property. The court determined that because the restrictive covenant created a public right in the property, the importance of the issue compelled allowing the late amendment. Id. Similarly, the releases of hazardous substances by the Corporate Defendants have contaminated the water supply of the City of Perth Amboy and injured Perth Amboy and its consumers. Perth Amboy is entrusted with protecting its water supply from sources of pollution and contamination, in order to safeguard the public health, safety and welfare. This protection includes holding all parties liable for environmental contamination. As in Springfield Tp., the liberal granting of amendments is particularly important to protect this public interest.

Amendments to pleadings have been permitted where there is a "failure to show any undue prejudice to the other parties and the absence of any history of dilatory tactics by counsel in the prosecution of the claim." Brower v. Gonnella, 222 N.J. Super. 75, 80 (App. Div. 1987) (motion for leave to add a defendant). The only dilatory conduct in this case has been from the defendants. As noted by Judge Hamlin, the industries "have done as little as possible, as cheaply as possible, as slowly as possible." The Corporate Defendants cannot show any undue prejudice if leave to file the amended complaint is granted. Further, because the Corporate Defendants operate as a single enterprise, there can be no question that each had notice. Indeed, the principals of

Madison, which are the same for the affiliated companies, have participated in this action.

In addition to the newly discovered evidence establishing the "unity of interests" of the defendants, Perth Amboy seeks to amend its complaint for fear that the entire controversy doctrine may bar its claims in the future. "Amendments to pleadings should be freely granted in the interest of justice." R. 4:9-1. This is especially true when the failure to join necessary parties may preclude a subsequent law suit because of the entire controversy doctrine." Tomaszewski, supra. at 411 (citations omitted).

Our courts have said that the entire controversy doctrine is a significant factor when it may bar a party's cause of action. See William M. Blanchard Co. v. Beach Concrete Co., Inc., 150 N.J. Super. 277 (App. Div. 1977), certif. den. 75 N.J. 528 (1977). "A litigation component embraced by the entire controversy doctrine - is eligible for the relation-back principle of the rule and consequently for protection from the limitations bar." Molnar v. Hedden, 260 N.J. Super. 133, 140 (App. Div. 1992). Denial of the motion for leave to amend would deprive the City of its right to have all issues of this controversy settled in one proceeding.

Finally, Rule 4:26-4 allows a plaintiff to amend its complaint to state a defendant's true name, in place of a fictitious defendant. The original complaint in this matter listed a John Doe defendant and plead an appropriate description. As stated above, Perth Amboy recently discovered that Madison and its affiliates, shareholders and officers are acting as a single, cohesive economic

unit. Therefore, pursuant to R. 4:26-4 Perth Amboy should be granted leave to amend its complaint.

CONCLUSION

As a result of the newly discovered evidence establishing a "single enterprise", to prevent the entire controversy doctrine from barring the enforcement and protection of a compelling public interest, and in accordance with Rule 4:26-4, plaintiff, City of Perth Amboy, respectfully requests that this Court enter an Order granting its motion for leave to amend the complaint.

MCMANIMON & SCOTLAND
One Gateway Center
Suite 1800
Newark, New Jersey 07102
(201) 622-1800
Attorneys for plaintiff,
City of Perth Amboy

By: 

Joseph J. Maraziti, Jr.

Dated: June 15, 1994

MCMANIMON & SCOTLAND
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NEWARK, NEW JERSEY 07102
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Attorneys for Plaintiff
City of Perth Amboy

-----X	:	
City of Perth Amboy,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	MIDDLESEX COUNTY
	:	
v.	:	DOCKET NO. L-4476-76 and
	:	C-28115-76
Madison Industries,	:	
	:	SPECIAL ENVIRONMENTAL CASE
Defendant.	:	
-----X	:	
State of New Jersey	:	
Department of Environmental	:	
Protection,	:	
	:	
Plaintiff,	:	
	:	CERTIFICATION OF
v.	:	SHERYL L. NEWMAN
	:	
CPS Chemical Company, Inc.,	:	
	:	
-----X	:	

I, Sheryl L. Newman, hereby certify to the following:

1. I am an associate with the firm of McManimon & Scotland, counsel for the plaintiff, the City of Perth Amboy, in the above matter.

2. I am familiar with the facts in this case and submit this Certification in support of plaintiff's motion for leave to amend its complaint.

3. Pursuant to several subpoena's issued to Madison Industries Inc., Madison Chemicals Inc., Old Bridge Chemicals Co. Inc., Old Bridge Metals & Chemicals Co. Inc. and Arnet Realty, the

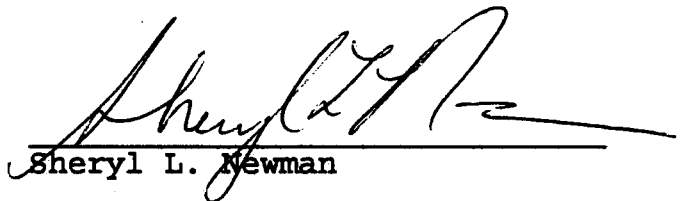
City of Perth Amboy requested, inter alia, copies of leases, partnership agreements, corporate minute books and stock transfer ledgers.

4. About June 3, 1994, counsel for Madison Industries Inc. advised me by fax that no written partnership agreement for Arnet Realty could be located. A copy of the fax is attached hereto as Exhibit A.

5. The only written lease provided to me was a lease between Arnet Realty and Madison Industries Inc.

6. About May 31, 1994, counsel for Madison Industries Inc. advised me by letter that there are no corporate minute books or stock transfer ledgers for Madison Industries Inc. and its affiliates. A copy of the letter is attached hereto as Exhibit B.

7. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Sheryl L. Newman

Dated: June 15, 1994

RAVIN, SARASOHN, COOK, BAUMGARTEN, FISCH & BAIME
A Professional Corporation
103 Eisenhower Parkway
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Telephone Number (201) 228-9600

TO: Sheryl Newman	
FAX#: 622-7333	PHONE#:
FROM: B. Buechler	DATE: 6-3-94
RE: Madison Industries	

CLIENT/MATTER#: 2800-2

DESCRIPTION OF DOCUMENT:

NUMBER OF PAGES (including this cover): 11
--

SPECIAL MESSAGE (if any):
Lease with Arnet Realty
No No written partnership
agreement for Arnet Realty
can be located.
Please let me know when you want
To review The Republic Bank
documents at Madison.

If you encounter any problems while receiving, please call (201) 228-9600, Extension 2620, Fax Room.

CONFIDENTIALITY NOTE:

The documents accompanying this telecopy transmission contain information from the law firm of Ravin, Sarason, Cook, Baumgarten, Fisch & Baine, which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named in this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited, and that the documents should be returned to this firm immediately. In this regard, if you have received this telecopy in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

COMPLETED: _____
DATE AND TIME
FAX OPERATOR: _____

RAVIN, SARASOHN, COOK, BAUMGARTEN, FISCH & BAIME

A PROFESSIONAL CORPORATION

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ANTHONY J. PASQUARIELLO*
STEVEN M. BLIGHT*
MARY ELLEN TULLY*
CHARLES B. SCHIRMEISTER*
KENNETH L. BAUM*
SETH E. ZUCKERMAN
TERRI JANE FREEDMAN*

*N.J. & N.Y. BARS
**N.J. & FL. BARS
+N.J., N.Y. & FL. BARS
+N.J., N.Y. & D.C. BARS
+N.J., N.Y., FL. & D.C. BARS
*N.J. & PA. BARS

May 31, 1994

VIA FAX

Sheryl L. Newman, Esq.
McManimon & Scotland
One Gateway Center
Newark, New Jersey 07102

Re: **Madison Industries, Inc.**

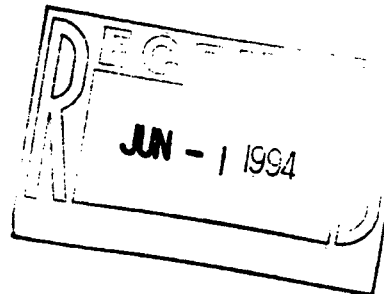
Dear Ms. Newman:

This letter is in response to your letter dated May 12, 1994, and our prior telephone conversation with regard to your May 12 letter.

This is to confirm that the Debtor and the affiliates (excluding Hyman Bzura) have produced all documents requested by the City of Perth Amboy with the exception of those set forth in your May 12 letter. With regard to those documents set forth in your May 12 letter, there are no corporate minute book, stock transfer ledger and/or listing of partners available for the Debtor and its affiliates. We will provide you with a copy of the lease between the Debtor and Arnet Realty and Arnet Realty's partnership agreement, if an existing copy can be located.

With regard to the Republic National Bank documents, you or someone from your office can review them at a mutually convenient time at the Debtor's facility in Old Bridge, New Jersey. Alternatively, a full set of the Republic National Bank documents are in the possession of Ben Becker, Esq., CPS Chemicals' counsel. I do not think Mr. Becker would have a problem with you or someone from your office reviewing the Republic National Bank loan documents at his office.

With regard to the documents requested from Hyman Bzura in the subpoena issued by the City of Perth Amboy dated November 3, 1993, Mr. Bzura has produced his personal tax return in response to item number 1. Documents responsive to numbers 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 have been produced by the Debtor and its affiliates. Mr. Bzura has no other responsive documents.



R, VIN, SARASOHN, COOK, BAUMGARTEN, FISCH & BAIME

A PROFESSIONAL CORPORATION

May 31, 1994

Page 2

With regard to number 9, Mr. Bzura will not produce his personal bank records.

We have previously served on you a copy of the Certificate of Title to Mr. Bzura's vehicle in response to item 7.

Mr. Bzura has no documents responsive to item number 8.

With regard to item number 15, Mr. Bzura is the beneficiary of a revocable trust established by Nettie Bzura.

Finally, Mr. Bzura will not produce any documents responsive to 16 or 17, except to note that with regard to the Debtor and its affiliates, all such documentation has been fully made available to the City of Perth Amboy.

Very truly yours,

RAVIN, SARASOHN, COOK,
BAUMGARTEN, FISCH & BAIME
A Professional Corporation


Bruce Buechler *LML*

BB:lml

cc: Hyman Bzura
Adrienne J. Bzura, Esq.
Kenneth A. Rosen, Esq.

M:\SHARED\BB\CORR\3555.1

SCHEDULE A

All references to the deponent herein shall be construed to refer to

- (1) All personal income tax returns filed since 1990.
- (2) All partnership income tax returns for all partnerships in which the defendant is or was a partner, filed since 1990.
- (3) All corporate income tax returns for all closely held corporations in which the defendant is or was a shareholder, officer or director, filed since 1990.
- (4) All deeds of real property in which an interest is held by the defendant or partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director.
- (5) All financial records of any partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director.
- (6) All mortgages and/or notes made by or given to the defendant, any partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director.
- (7) All certificates of title to, or registrations of motor vehicles evidencing ownership by the defendant, any partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director.
- (8) All insurance policies naming as beneficiary, the defendant, any partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director.
- (9) All current statements of account for checking, savings, or otherwise, money market funds and all certificates of deposit held by the defendant, any partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director.
- (10) All stocks and bonds of any kind in which an interest is held by the defendant, any partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director.
- (11) All leases in which the defendant, any partnership in which the defendant is a partner or closely held corporation in which the defendant is a stockholder, officer or director is the lessor or lessee.
- (12) All partnership agreements of partnerships in which the defendant is a partner or in which either or both has a financial interest.
- (13) All joint venture agreements of joint ventures in which the defendant has a financial interest.
- (14) List of all accounts receivable of any partnership in which the defendant is a partner and of any closely held corporation in which the defendant is a shareholder, director or officer.
- (15) All trust agreements in which the defendant is or may become a beneficiary.
- (16) List of all personal property of unusual value: works of arts, boats, antiques owned by the defendant, any partnership in which the defendant is

a partner or closely held corporation in which the defendant is a shareholder, director or officer.

- (17) List of personal property such as jewelry, household furnishings owned by the defendant and the value thereof.
- (18) List of bank accounts, certificates of deposits, mutual funds and any other accounts, including a balance therein.

MCMANIMON & SCOTLAND
ONE GATEWAY CENTER
SUITE 1800
NEWARK, NEW JERSEY 07102
(201) 622-1800
Attorneys for Plaintiff
City of Perth Amboy

-----x	:	
City of Perth Amboy,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	MIDDLESEX COUNTY
	:	
v.	:	DOCKET NO. L-4476-76 and
	:	C-28115-76
Madison Industries,	:	
	:	
Defendant.	:	CIVIL ACTION
	:	
-----x	:	
State of New Jersey	:	
Department of Environmental	:	
Protection,	:	
	:	
Plaintiff,	:	
	:	CERTIFICATION OF
v.	:	JEFFREY G. KRAMER
	:	
CPS Chemical Company, Inc.,	:	
	:	
-----x	:	

I, Jeffrey G. Kramer, hereby certify to the following:

1. I am a member of the firm of McManimon & Scotland, counsel for the plaintiff, the City of Perth Amboy, in the above matter.

2. I am familiar with the facts in this case and submit this Certification in support of plaintiff's motion for leave to amend its complaint.

3. On April 29, 1994, I visited the offices of Madison Industries Inc. and related companies at Old Waterworks Road in Old Bridge, New Jersey to review documents pursuant to a subpoena.

4. Julie Sun, Controller, provided to me photocopies of certain financial and other records of Madison Industries Inc. and related companies, including year end trial balances, and certain related year end adjusting journal entries, for each of the fiscal years ending June 30, 1988 through June 30, 1993.

5. I reviewed copies of federal Form 1120, U.S. Corporation Income Tax Return of Madison Industries Inc., whose address is listed at Waterworks Road, Old Bridge, New Jersey 08857, for each of the fiscal years 1987, 1988, 1989, 1990, 1991 and 1992 (the "Madison Returns").

6. On each of the Madison Returns, the principal business activity of Madison Industries Inc. was listed as a manufacturer of chemicals.

7. The Madison Returns listed the following persons as officers of Madison Industries Inc. for the years indicated:

(i) 1992 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); and (C) Hyman Bzura (reflecting no common stock ownership);

(ii) 1991 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D) Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(iii) 1990 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D)

Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(iv) 1989 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D) Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(v) 1988 - (A) Bruce Bzura (also owning 10% of the common stock); and (B) Joel Bzura (also owning 10% of the common stock); and

(vi) 1987 - (A) Bruce Bzura (common stock ownership was left blank); and (B) Joel Bzura (common stock ownership was left blank).

8. I reviewed copies of federal Form 1120, U.S. Corporation Income Tax Return of Old Bridge Chemical Co. Inc., whose address is listed at Waterworks Road, Old Bridge, New Jersey 08857 for each of the fiscal years 1987, 1988, 1989, 1990, 1991 and 1992 (the "Old Bridge Returns").

9. On each of the Old Bridge Returns, the principal business activity of Old Bridge Chemical Co. Inc. was listed as a manufacturer of chemicals.

10. The Old Bridge Returns listed the following persons as officers of Old Bridge Chemical Co. Inc. for the years indicated:

(i) 1992 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); and (C) Hyman Bzura (reflecting no common stock ownership);

(ii) 1991 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D) Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(iii) 1990 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D) Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(iv) 1989 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D) Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(v) 1988 - Arnold Asmon (common stock ownership was left blank); and

(vi) 1987 - Arnold Asmon (common stock ownership was left blank).

11. I reviewed copies of federal Form 1120, U.S. Corporation Income Tax Return, of Madison Chemicals Inc., whose address is listed at Waterworks Road, Old Bridge, New Jersey 08857 for each of the fiscal years 1987, 1988, 1989, 1990, 1991 and 1992 (the "Chemical Returns").

12. On each of the Chemical Returns, the principal business activity of Madison Chemicals Inc. was listed as a manufacturer of chemicals.

13. The Chemical Returns lists the following persons as officers of Madison Chemicals Inc. for the years indicated:

(i) 1992 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); and (C) Hyman Bzura (reflecting no common stock ownership);

(ii) 1991 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D) Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(iii) 1990 - (A) Bruce Bzura (common stock ownership was left blank); (B) Joel Bzura (common stock ownership was left blank); (C) Hyman Bzura (common stock ownership was left blank), (D) Adrienne Bzura (common stock ownership was left blank) and (E) Arnold Asmon (common stock ownership was left blank);

(iv) 1989 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); (C) Hyman Bzura (also owning 53% of the common stock), (D) Adrienne Bzura (also owning 10% of the common stock) and (E) Arnold Asmon (also owning 17% of the common stock);

(v) the applicable schedule in the 1988 return was blank;
and

(vi) the applicable schedule in the 1987 return was blank.

14. I reviewed copies of federal Form 1120, U.S. Corporation Income Tax Return, of Old Bridge Metals & Chemicals Co. Inc., whose address is listed as P.O. Box 175, Old Bridge, New

Jersey 08857, for each of the fiscal years 1987, 1988, 1989, 1990, 1991 and 1992 (the "Metals Returns").

15. On each of the Metals Returns, the principal business activity of Old Bridge Metals & Chemicals Co. Inc. was listed as a manufacturer of chemicals.

16. The Metals Returns list the following persons as officers of Old Bridge Metals & Chemicals Co. Inc. for the years indicated:

(i) 1992 - (A) Bruce Bzura (also owning 10% of the common stock); (B) Joel Bzura (also owning 10% of the common stock); and (C) Hyman Bzura (reflecting no common stock ownership);

(ii) the applicable schedule in the 1991 return was blank;

(iii) the applicable schedule in the 1990 return was blank;

(iv) the applicable schedule in the 1989 return was blank;

(v) the applicable schedule in the 1988 return was blank; and

(vi) the applicable schedule in the 1987 return was blank.

17. I reviewed copies of federal Form 1065, U.S. Partnership Return of Income, of Arnet Realty Co. for each of the calendar years 1992, 1991, 1990, 1989, 1988 and 1987 (the "Arnet Returns").

18. Each of the Arnet Returns reflect 38 Crest Drive, South Orange, NJ 07079 as the address of the partnership.

19. Each of the Arnet Returns reflect "Real Estate" as its principal business activity and "Rental" as its principal service.

20. Each of the Arnet Returns (except 1992, with respect to which the applicable pages have not been provided to me), on Schedule L, reflects ownership of land and buildings.

21. Each of the Arnet Returns, on federal Form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation, annexed thereto, or other applicable schedule, lists "Buildings - Old Bridge New Jersey" as the kind and location of each property.

22. The Schedules K-1 to the Arnet Returns show that the following individuals were partners in the partnership for one or more of such years:

(i) Nettie Bzura, 38 Crest Drive, South Orange, NJ 07079;

(ii) Arnold Asmon, 131 Serpentine Lane, Sedringtown, NY 11507;

(iii) Adrienne Bzura-Radmin, 17 Blanchard Road, South Orange, NJ 07079;

(iv) Joel Bzura, 19 Leonard Drive, Morganville, NJ 07751;
and

(v) Bruce Bzura, 27 Vista Drive, Morganville, NJ 07751.

23. My review of the year end trial balances and related adjusting journal entries revealed substantial intercompany transactions among Madison Industries Inc., Old Bridge Chemical Co. Inc., Madison Chemicals Inc., Old Bridge Metals & Chemicals Co.

Inc., and Arnet Realty, and certain of the shareholders, among others.

24. The records revealed that in many cases these intercompany account balances were adjusted, and sometimes eliminated, by adjusting journal entries.

25. The adjusting journal entries were also used to allocate expenses and other amounts paid or incurred by one of the companies among the other companies. In certain cases, the allocations were made ratably based on the sales of the various companies.

26. Adjusting journal entries were used to remove sales of etchant from the books of Old Bridge Chemical Co. Inc. and to place them on the books of Old Bridge Metals & Chemicals Co. Inc.

27. I reviewed a union contract, dated November 14, 1993, and currently in effect, by and among the union, Madison Industries, Inc. and Old Bridge Chemical Co., Inc.

28. I reviewed various insurance certificates. The certificates indicated that one policy of insurance included all of the various companies operating at the Old Waterworks Road facility.

29. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Jeffrey G. Kramer

Dated: June 14, 1994

-----x
:
City of Perth Amboy,
:
:
Plaintiff,
:
:
v.
:
:
Madison Industries Inc., Old
:
Bridge Chemicals Co. Inc.,
:
Old Bridge Metals &
:
Chemicals Co. Inc., Madison
:
Chemicals Inc., Arnet Realty
:
Co., Nettie Bzura, Arnold
:
Asmon, Hyman Bzura, Joel
:
Bzura, Bruce Bzura and
:
Adrienne Bzura-Radmin,
:
:
Defendants.
:

DOCKET NO. L-4476-76 and
C-28115-76

State of New Jersey
Department of Environmental
Protection,

Plaintiff,

v.

CPS Chemical Company, Inc.,

Defendant.

-----X

Plaintiff, the City of Perth Amboy, a municipal corporation of the State of New Jersey, with offices at High Street, Perth Amboy, New Jersey, by way of amending its Complaint states:

FIRST COUNT

1. On or about March 17, 1971, and for a long time prior thereto, the plaintiff was the owner of certain lands located in Runyon, Old Bridge Township, (formerly Madison Township), Middlesex County, New Jersey on which it operated a waterworks.

2. Said waterworks, among other things, consists of a watershed of approximately 1200 acres, under which aquifers, commonly known as Old Bridge Sands and Farrington Sands, are located.

3. Plaintiff is a purveyor of potable water which its draws from the wells located in the aforementioned aquifers, which water is purified and sold to its customers for domestic, commercial and industrial use.

4. On or about March 17, 1981, the State of New Jersey, Department of Environmental Protection ordered the plaintiff to close down six (6) wells located on the lands and waterworks aforementioned and thereafter ordered the closing down of an additional twenty-six (26) wells due to contamination and pollution, thereby rendering the water in said wells unsafe for human consumption.

5. The defendant, Madison Industries, Inc., (formerly Food Additives, Inc.) a New Jersey Corporation was, and is, the owner and operator of a factory facility adjacent to the premises of the plaintiff.

6. The defendant, C.P.S. Chemical Company, a Division of Chemical Pollution Sciences, Inc., a New Jersey Corporation,

was, and is, the owner and operator of a factory facility in near proximity to the plaintiff's premises.

7. The defendant, North American Industrial Park, I.S. Company, Plant #4, a Division of Spiral Metals Company, a New Jersey Corporation was, and is, the owner and operator of a factory facility in near proximity to plaintiff's premises.

8. The defendant, Manzo Construction Company, Inc., a New Jersey Corporation, was, and is, the owner and operator of a factory facility adjacent to the premises of the plaintiff.

9. The true name and capacity, whether individual, corporate, associate, representative, or otherwise, of defendant named herein as John Doe, is not known to plaintiff, who consequently sues such defendant by such fictitious name. Plaintiff will seek leave to amend this Complaint to state the true name and capacity of each and every defendant when they have been ascertained.

10. At all times mentioned herein, the defendants, jointly and severally, were negligent and careless in the operation of their factory facilities in that they permitted materials used in their manufacturing processes and the refuse from said processes to blow in the wind as dust over and onto the lands of the plaintiff, discharged large quantities of factory refuse, harmful chemicals, sewerage and other noxious and polluting substances, both solid and liquid, into Pricketts Brook, Pricketts Pond, Tenants Pond and the plaintiff's water system, and caused other materials to be discharged upon the plaintiff's lands which

discharge ultimately seeped into the underground water of the Old Bridge Sands thereby contaminating and polluting plaintiff's water supply.

11. As a direct and proximate result of the defendants' negligence and carelessness, jointly and severally, the plaintiff has and will continue to suffer great damage to its waterworks and the operation thereof.

WHEREFORE, the plaintiff, the City of Perth Amboy, a Municipal Corporation, demands judgment against all of the defendants for damages, interest and costs of suit on the First Count.

SECOND COUNT - NUISANCE

12. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

13. All of the defendants named herein did, jointly and severally, create and maintain a nuisance to exist, which nuisance continues to the detriment and damage of the plaintiff.

14. As a direct and proximate result of the nuisance of the defendants, jointly and severally, the plaintiff suffered and continues to suffer great damage to the ownership and operation of its water works.

WHEREFORE, plaintiff demands judgment against all of the defendants for damages, interest and costs of suit on the Second Count.

THIRD COUNT - TRESPASS

15. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

16. All of the defendants named herein, jointly and severally, committed a trespass upon the plaintiff's lands by improper storing and mishandling of its raw, finished and waste products which each of the named defendants permitted to escape the boundary and confines of each defendant's facility and be blown by the wind and elements and to run off their properties onto the plaintiff's property as well as to seep, or leach, into the soil and such trespass affected the surface waters as well as ground waters in contaminating and polluting plaintiff's water system.

17. As a direct and proximate result of the trespass of the defendants, jointly and severally, the plaintiff suffered and continues to suffer great damage to the ownership and operation of its waterworks.

WHEREFORE, plaintiff demands judgment against all of the defendants for damages, interest and costs of suit on the Third Count.

FOURTH COUNT - STRICT LIABILITY IN TORT

18. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

19. All of the defendants' operations, and the materials used in said operations were defective, hazardous, deleterious and dangerous by nature and were not reasonably safe in that said operations and materials used in said operations subjected the plaintiff's lands and waterworks to great damage and harm resulting in the closing down of many of plaintiff's wells due to contamination and pollution of the water contained in said wells.

WHEREFORE, plaintiff demands judgment against all of the defendants for damages, interest and costs of suit on the Fourth Count.

FIFTH COUNT - RIPARIAN RIGHTS

20. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

21. The location of each defendants' place of business described herein is on or near Pricketts Brook, Pricketts Pond, Tenants Pond and the plaintiff's entire water systems. Such streams and/or stream beds and well fields, but for the wrongful acts of the defendants described herein, compose a large system of fresh water suitable for human, domestic and industrial consumption.

22. Plaintiff is the owner of certain lands and the operator of a waterworks located on said lands, located in Runyon, Old Bridge Township (formerly Madison Township), Middlesex County,

New Jersey as aforesaid and such land is riparian to Pricketts Brook, Pricketts Pond and Tenants Pond.

23. Defendants, jointly and severally, have for many years prior to the filing of this complaint, permitted materials used in their manufacturing processes to blow in the wind as dust over and onto the aforementioned stream bed drainage system and discharged large quantities of factory refuse, harmful chemicals, sewerage and other noxious and polluting substances, both solid and liquid into the Perth Amboy water system, and did divert the natural stream and/or stream bed known as Pricketts Brook to accommodate its convenience to the detriment of plaintiff's right in said stream and/or stream bed and therefore caused damage to the water system of plaintiff's watershed and/or wells.

WHEREFORE, the plaintiff demands judgment against the defendants for damages and costs of suit on the Fifth Count.

**SIXTH COUNT - FRAUD DECEIT &
MISREPRESENTATION**

24. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

25. On or about March 17, 1971, and for a long time prior thereto, the defendants, jointly and severally, falsely and with intent to defraud the plaintiff, represented to the plaintiff that each of their operations would be safe and would not in any way affect the plaintiff's watershed, well fields or plaintiff's

operation of its water works in the production of safe drinking water for human consumption.

26. Such representations were false in fact and were made without any knowledge as to whether the same were true or false and without any reasonable grounds to believe they were true and in reckless disregard of whether or not they were true.

27. The plaintiff believed and relied upon the aforesaid representations and was thereby induced to allow defendants to continue their respective operations.

28. As a direct and proximate result of the fraud, deceit and misrepresentation of the defendants, jointly and severally, the plaintiff has and will continue to suffer great damage to its waterworks and the operation thereof.

WHEREFORE, the plaintiff demands judgment against all of the defendants for damages, interest and costs of suit on the Sixth Count.

SEVENTH COUNT - PUNITIVE DAMAGES

29. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

30. At all times mentioned herein, defendants, jointly and severally, failed to obtain location permits upon or near the plaintiff's watershed, which water supplies are for potable means.

31. In addition to the claims made for compensatory damages herein, plaintiff makes claim for punitive damages against

all of the defendants, jointly and severally, who knowingly, willfully, wantonly, maliciously and without due regard for plaintiff's rights, operated their respective businesses to the damage and detriment of the plaintiff in its ownership and operation of its waterworks.

WHEREFORE, plaintiff demands judgment against all of the defendants for damages, interest and costs of suit on the Seventh Count.

EIGHTH COUNT

32. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

33. Plaintiff, the City of Perth Amboy ("Perth Amboy") operates the public water supply system which supplies drinking water to the residents of Perth Amboy and South Amboy.

34. Perth Amboy is entrusted with protecting the water supply from sources of pollution and contamination in order to safeguard the public health, safety and welfare of the residents of the City of Perth Amboy and South Amboy.

35. Upon information and belief, defendant Madison Industries Inc. is a New Jersey corporation with its principal place of business at Waterworks Road, Old Bridge, New Jersey.

36. Madison Industries Inc. filed for relief under Chapter 11 of the United States Bankruptcy Code about November 24, 1992, which matter is currently pending.

37. Upon information and belief, defendant Old Bridge Chemical Co. Inc. is a New Jersey corporation with its principal place of business at Waterworks Road, Old Bridge, New Jersey.

38. Upon information and belief, defendant Madison Chemicals Inc. is a New Jersey corporation with its principal place of business at Waterworks Road, Old Bridge, New Jersey.

39. Upon information and belief, defendant Old Bridge Metals & Chemicals Co. Inc. is a New Jersey corporation with its principal place of business at Waterworks Road, Old Bridge, New Jersey.

40. Upon information and belief, defendant Arnet Realty is a New Jersey partnership with offices at 38 Crest Drive, South Orange, New Jersey 07079.

41. Upon information and belief, defendant Hyman Bzura is an individual residing at 38 Crest Drive, South Orange, New Jersey 07079.

42. Hyman Bzura is an officer of Madison Industries Inc., Old Bridge Chemical Co. Inc., Madison Chemicals Inc. and Old Bridge Metals & Chemicals Inc. (collectively, the "Corporate Defendants"). Hyman Bzura controls or has the ability to control the activities of the Corporate Defendants.

43. Hyman Bzura was a shareholder of the Corporate Defendants.

44. Upon information and belief, defendant Nettie Bzura is an individual residing at 38 Crest Drive, South Orange, New Jersey 07079.

45. Nettie Bzura is a partner of Arnet Realty Co. and controls or has the ability to control the activities of Arnet Realty Co.

46. Upon information and belief, defendant Joel Bzura is an individual residing at 19 Leonard Drive, Morganville, New Jersey 07751.

47. Joel Bzura is an officer and shareholder of the Corporate Defendants and controls or has the ability to control the activities of the Corporate Defendants.

48. Joel Bzura was a partner of Arnet Realty Co.

49. Upon information and belief, defendant Bruce Bzura is an individual residing at 27 Vista Drive, Morganville, New Jersey 07751.

50. Bruce Bzura is an officer and shareholder of the Corporate Defendants and controls or has the ability to control the activities of the Corporate Defendants.

51. Bruce Bzura was a partner of Arnet Realty Co.

52. Upon information and belief, Adrienne Bzura-Radmin is an individual residing at 17 Blanchard Road, South Orange, New Jersey 07079.

53. Adrienne Bzura-Radmin is a shareholder of the Corporate Defendants and controls or has the ability to control the activities of the Corporate Defendants.

54. Adrienne Bzura-Radmin was a partner of Arnet Realty Co.

55. Upon information and belief, defendant Arnold Asmon is an individual residing at 131 Serpentine Lane, Sedringtown, New York 11507.

56. Arnold Asmon is a shareholder of the Corporate Defendants and controls or has the ability to control the activities of the Corporate Defendants.

57. Arnold Asmon is a partner of Arnet Realty Co. and controls or has the ability to control the activities of Arnet Realty Co.

58. The Corporate Defendants operate their business at Waterworks Road, Old Bridge, New Jersey (the "Facility"), pursuant to a lease agreement between Arnet and Madison.

59. Arnet Realty owns the Facility and real property located at Waterworks Road, Old Bridge, New Jersey.

60. All personnel for the Corporate Defendants are located at the Facility.

61. The Corporate Defendants have one labor contract.

62. The Corporate Defendants allocate various overhead items ratably among each other, based upon sales.

63. The officers and shareholders of the Corporate Defendants are identical.

64. There are no distinct corporate minute books or stock transfer ledgers for the Corporate Defendants.

65. The registered agent for each Corporate Defendant is located at Waterworks Road, Old Bridge, New Jersey.

66. The Corporate Defendants have substantial inter-company transactions.

WHEREFORE, plaintiff demands judgment against all of the defendants for damages, interest and costs of suit.

NINTH COUNT

67. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

68. Defendant Arnet Realty Co. ("Arnet") is the owner of the Facility.

69. Defendants Nettie Bzura and Arnold Asmon are each partners of Arnet.

70. Nettie Bzura and Arnold Asmon are jointly and severally liable as the owners of the Facility.

71. At some time during the operation of the business, defendants Adrienne Bzura-Radmin, Joel Bzura and Bruce Bzura were partners of Arnet Realty Co.

72. Hazardous substances were disposed of and released from the Corporate Defendants into the environment during the time in which the Facility was owned by Arnet Realty Co. and its partners.

73. Adrienne Bzura-Radmin, Joel Bzura and Bruce Bzura are jointly and severally liable as past owners of the Facility.

74. The Corporate Defendants have released hazardous substances into the environment at the Facility.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants:

(a) declaring that the Defendants are jointly and severally liable for cleanup and removal costs thus far incurred by Perth Amboy;

(b) declaring that the Defendants are liable for future cleanup and removal costs which Perth Amboy may incur;

(c) ordering the Defendants to reimburse and indemnify Perth Amboy for all cleanup and removal costs incurred to date and all response costs Perth Amboy may incur in the future;

(d) declaring that the Defendants are jointly and severally liable to Perth Amboy for natural resource damages;

(e) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees;

(f) declaring that the Defendants are jointly and severally liable to Perth Amboy for damages resulting from the diminution in value of the water system, real estate and other assets of Perth Amboy; and

(g) such other relief as the Court may deem just and equitable.

TENTH COUNT

75. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

76. Defendant Arnet is the owner of the Facility.

77. The Corporate Defendants operate their businesses at the Facility, pursuant to a lease agreement with Arnet.

78. Hazardous substances were disposed of and released from the Corporate Defendants into the environment during the time in which the Facility was leased from Arnet to the Corporate Defendants.

79. Arnet is liable as landlord of the Facility.

80. The Corporate Defendants have released hazardous substances into the environment at the Facility.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants:

(a) declaring that the Defendants are jointly and severally liable for cleanup and removal costs thus far incurred by Perth Amboy;

(b) declaring that the Defendants are liable for future cleanup and removal costs which Perth Amboy may incur;

(c) ordering the Defendants to reimburse and indemnify Perth Amboy for all cleanup and removal costs incurred to date and all response costs Perth Amboy may incur in the future;

(d) declaring that the Defendants are jointly and severally liable to Perth Amboy for natural resource damages;

(e) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees;

(f) declaring that the Defendants are jointly and severally liable to Perth Amboy for damages resulting from the

diminution in value of the water system, real estate and other assets of Perth Amboy; and

(g) such other relief as the Court may deem just and equitable.

ELEVENTH COUNT

81. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

82. The Corporate Defendants are each jointly and severally liable as the operators of the Facility.

83. At some time while the Corporate Defendants operated the business at the Facility, they released hazardous substances into the environment.

84. Defendants Adrienne Bzura-Radmin, Hyman Bzura, Joel Bzura, Bruce Bzura and Arnold Asmon are shareholders and/or officers of the Corporate Defendants and each control or have the ability to control the activities of the Corporate Defendants. This control includes environmental matters.

85. Adrienne Bzura-Radmin, Hyman Bzura, Joel Bzura, Bruce Bzura and Arnold Asmon are therefore properly responsible and liable for the actions and/or omissions of the Corporate Defendants during the time in which the Corporate Defendants disposed of hazardous substances which were released into the environment.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants:

(a) declaring that the Defendants are jointly and severally liable for cleanup and removal costs thus far incurred by Perth Amboy;

(b) declaring that the Defendants are liable for future cleanup and removal costs which Perth Amboy may incur;

(c) ordering the Defendants to reimburse and indemnify Perth Amboy for all cleanup and removal costs incurred to date and all response costs Perth Amboy may incur in the future;

(d) declaring that the Defendants are jointly and severally liable to Perth Amboy for natural resource damages;

(e) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees;

(f) declaring that the Defendants are jointly and severally liable to Perth Amboy for damages resulting from the diminution in value of the water system, real estate and other assets of Perth Amboy; and

(g) such other relief as the Court may deem just and equitable.

TWELFTH COUNT

86. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

87. The Corporate Defendants are each jointly and severally liable as the operators of the Facility.

88. At some time while the Corporate Defendants operated the business at the Facility, they released hazardous substances into the environment.

89. The Corporate Defendants acted in concert with Madison in releasing hazardous substances into the environment.

90. The Corporate Defendants act as a single, cohesive economic unit.

91. The Corporate Defendants are therefore properly responsible and liable for the actions and/or omissions of Madison during the time in which Madison released hazardous substances into the environment.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants:

(a) declaring that the Defendants are jointly and severally liable for cleanup and removal costs thus far incurred by Perth Amboy;

(b) declaring that the Defendants are liable for future cleanup and removal costs which Perth Amboy may incur;

(c) ordering the Defendants to reimburse and indemnify Perth Amboy for all cleanup and removal costs incurred to date and all response costs Perth Amboy may incur in the future;

(d) declaring that the Defendants are jointly and severally liable to Perth Amboy for natural resource damages;

(e) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees;

(f) declaring that the Defendants are jointly and severally liable to Perth Amboy for damages resulting from the diminution in value of the water system, real estate and other assets of Perth Amboy; and

(g) such other relief as the Court may deem just and equitable.

THIRTEENTH COUNT

92. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

93. Upon information and belief, the day-to-day affairs of the Corporate Defendants are governed and conducted by defendant Hyman Bzura, who actively participated in the conduct of the Corporate Defendants and directed and sanctioned the affairs and operations of the Corporate Defendants or who had the ability to direct and sanction such affairs.

94. Defendant Hyman Bzura is therefore properly responsible and liable for the actions of the Corporate Defendants during the time in which the Corporate Defendants released hazardous substances into the environment.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants:

(a) declaring that the Defendants are jointly and severally liable for cleanup and removal costs thus far incurred by Perth Amboy;

(b) declaring that the Defendants are liable for future cleanup and removal costs which Perth Amboy may incur;

(c) ordering the Defendants to reimburse and indemnify Perth Amboy for all cleanup and removal costs incurred to date and all response costs Perth Amboy may incur in the future;

(d) declaring that the Defendants are jointly and severally liable to Perth Amboy for natural resource damages;

(e) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees;

(f) declaring that the Defendants are jointly and severally liable to Perth Amboy for damages resulting from the diminution in value of the water system, real estate and other assets of Perth Amboy; and

(g) such other relief as the Court may deem just and equitable.

FOURTEENTH COUNT

95. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

96. At all times relevant hereto, including but not limited to the late 1960's to the present, defendants Hyman Bzura, Nettie Bzura, Bruce Bzura, Joel Bzura, Adrienne Bzura-Radmin and Arnold Asmon controlled the Corporate Defendants to the extent there was a unity of interest and ownership between the Corporate

Defendants such that the independence of the Corporate Defendants had in effect ceased or never begun and should be disregarded.

97. The Defendants are jointly and severally liable for the release of hazardous substances into the environment.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants:

(a) declaring that the Defendants are jointly and severally liable for cleanup and removal costs thus far incurred by Perth Amboy;

(b) declaring that the Defendants are liable for future cleanup and removal costs which Perth Amboy may incur;

(c) ordering the Defendants to reimburse and indemnify Perth Amboy for all cleanup and removal costs incurred to date and all response costs Perth Amboy may incur in the future;

(d) declaring that the Defendants are jointly and severally liable to Perth Amboy for natural resource damages;

(e) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees;

(f) declaring that the Defendants are jointly and severally liable to Perth Amboy for damages resulting from the diminution in value of the water system, real estate and other assets of Perth Amboy; and

(g) such other relief as the Court may deem just and equitable.

FIFTEENTH COUNT

98. Perth Amboy repeats and realleges the allegations set forth in paragraphs above and incorporates same as if set forth herein at length.

99. Upon information and belief, the Corporate Defendants, Arnet Realty Co., Nettie Bzura, Arnold Asmon, Hyman Bzura, Joel Bzura, Bruce Bzura and Adrienne Bzura-Radmin (collectively, the "Defendants") have discharged or have caused to be discharged onto and/or into the soil, subsoil and groundwater, hazardous substances as defined in the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq., at N.J.S.A. 58:10-23.11b.k.

100. The discharge of such hazardous substances has injured and continues to injure the groundwater aquifer from which drinking water is drawn by Perth Amboy.

101. The Spill Act, at N.J.S.A. 58:10-23.11g.c., provides in pertinent part that:

Any person who has discharged a hazardous substance or is in any way responsible for any hazardous substance shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants:

(a) declaring that the Defendants are jointly and severally liable for cleanup and removal costs thus far incurred by Perth Amboy;

(b) declaring that the Defendants are liable for future cleanup and removal costs which Perth Amboy may incur;

(c) ordering the Defendants to reimburse and indemnify Perth Amboy for all cleanup and removal costs incurred to date and all response costs Perth Amboy may incur in the future;

(d) declaring that the Defendants are jointly and severally liable to Perth Amboy for natural resource damages;

(e) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees;

(f) declaring that the Defendants are jointly and severally liable to Perth Amboy for damages resulting from the diminution in value of the water system, real estate and other assets of Perth Amboy; and

(g) such other relief as the Court may deem just and equitable.

SIXTEENTH COUNT

102. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

103. Pursuant to the Spill Act, at N.J.S.A. 58:10-23.11b.k., the chemicals released into the environment by the Defendants are considered to be hazardous substances.

104. As the generators/owners/transporters of such hazardous substances and owners and operators of the facility where such hazardous substances are stored/treated/disposed, the

Defendants are engaged in, or are responsible for the conduct of, abnormally dangerous or ultrahazardous activities.

105. Therefore, the Defendants are strictly liable for all damages arising from their manufacture, handling, storage, transportation and disposal.

106. The Defendants are liable for all direct and consequential damages suffered by Perth Amboy as a result of the Defendants' aforesaid conduct.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants as follows:

(a) awarding damages in an amount to be determined at the trial of this action;

(b) issuing a mandatory injunction requiring the Defendants to remediate any contamination caused by or resulting from the hazardous substances generated, handled, stored, treated, or disposed of by the Defendants, or for which the Defendants are otherwise responsible, at the Facility and/or operations;

(c) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees; and

(d) such other relief as the Court may deem equitable and just.

SEVENTEENTH COUNT

107. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

108. The Defendants have discharged, or are responsible for discharging onto and/or into the soil, subsoil and groundwater at the Facility, hazardous substances.

109. The discharges of hazardous substances, for which the Defendants are responsible, constitute both public and private nuisances which injured and continue to injure the groundwater resources of Perth Amboy and prevent Perth Amboy and its residents from having the full use and enjoyment of such resources and threaten the surrounding environment and the public health, safety and welfare.

110. The Defendants are liable for all direct and consequential damages suffered by Perth Amboy and the residents of Perth Amboy, in general, as a result of their aforesaid unreasonable and wrongful conduct.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants, jointly and severally, as follows:

(a) awarding damages in an amount to be determined at the trial of this action;

(b) entering a mandatory injunction requiring the Defendants to remediate any contamination caused by or resulting from the hazardous substances generated, handled, stored, treated, or disposed of by the Defendants, or for which the Defendants are otherwise responsible, at the Facility and/or operations;

(c) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees; and

(d) such other relief as the Court may deem just and equitable.

EIGHTEENTH COUNT

111. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

112. The Defendants have released, or are responsible for releasing, onto and/or into the soil, subsoil and groundwater at the Facility, hazardous substances that have entered the aquifer from which the Perth Amboy wells draw water and have contaminated, and continue to contaminate, such wells.

113. The Defendants are liable for all direct and consequential damages suffered by Perth Amboy and the consumers of its drinking water supply, in general, as a result of the Defendants' aforesaid unauthorized and wrongful conduct.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor against the Defendants, jointly and severally, as follows:

(a) awarding damages in an amount to be determined at the trial of this action;

(b) issuing a mandatory injunction requiring the Defendants to remediate any contamination caused by or resulting from the hazardous substances generated, handled, stored, treated, or disposed of by the Defendants, or for which the Defendants are otherwise responsible, at the Facility and/or operation;

(c) awarding Perth Amboy the costs and disbursements of this action and reasonable attorneys' fees; and

(d) such other relief as the Court may deem equitable and just.

NINETEENTH COUNT

114. Perth Amboy repeats and realleges that allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

115. Upon information and belief, the hazardous substance contamination of the groundwater aquifer of Perth Amboy's well field resulted from the negligent or willfully tortious acts and/or omissions of the Defendants.

116. As a result of such negligent or willfully tortious acts and/or omissions on the part of the Defendants, Perth Amboy has sustained damages.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants as follows:

(a) awarding Perth Amboy damages in an amount to be determined at trial of this action;

(b) awarding Perth Amboy the costs and disbursements of this action and its reasonable attorneys' fees; and

(c) such other relief as the Court may deem just and equitable.

TWENTIETH COUNT

117. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

118. Upon information and belief, the failure of the Defendants to undertake and/or complete necessary cleanup of the hazardous substance contamination in a timely and satisfactory manner has been the result of negligent or willful tortious acts and/or omissions on the part of the Defendants.

119. As a result of such negligent or willful tortious acts and/or omissions on the part of the Defendants, Perth Amboy has sustained damages.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants, jointly and severally, as follows:

(a) awarding damages in an amount to be determined at trial of this action;

(b) awarding the costs and disbursements of this action and reasonable attorneys' fees; and

(c) such other relief as the Court may deem just and equitable.

TWENTY-FIRST COUNT

120. Perth Amboy repeats and realleges the allegations set forth in the paragraphs above and incorporates same as if set forth herein at length.

121. The Defendants have discharged, or are responsible for discharging, onto and/or into the soil, subsoil and groundwater at its facility, hazardous substances, several of which are known or suspected carcinogens.

122. The discharges of hazardous substances, for which the Defendants are responsible, have injured and continue to injure the groundwater aquifer from which Perth Amboy draws water for eventual public consumption, and threaten the surrounding environment and the public health, safety and welfare.

123. Perth Amboy is empowered pursuant to the Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., to bring an action to prevent environmental degradation and ensure the enforcement of environmental laws within the State of New Jersey.

WHEREFORE, Perth Amboy requests that judgment be entered in its favor and against the Defendants, jointly and severally, as follows:

(a) issuing preliminary and permanent injunctive relief restraining the Defendants from continuing or allowing to continue any unlawful discharge or leaching of a hazardous substance which is threatening, causing or contributing to environmental degradation of the Perth Amboy well field;

(b) issuing a mandatory injunction requiring the Defendants to remediate any contamination caused by or resulting from the hazardous substances stored or handled by it, or for which it is otherwise responsible, at its facility;

(c) awarding the costs and disbursements of this action and reasonable attorneys' fees; and

(d) such other relief as the Court may deem just and equitable.

JURY DEMAND

Perth Amboy demands trial by jury as to all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Joseph J. Maraziti, Jr. and James R. Gregory are hereby designated as trial counsel for the within matter.

MCMANIMON & SCOTLAND
One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
City of Perth Amboy

By: 

Joseph J. Maraziti, Jr.

Dated: June 15, 1994

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Attorneys for Plaintiff
City of Perth Amboy

-----X	:	
City of Perth Amboy,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	MIDDLESEX COUNTY
	:	
v.	:	DOCKET NO. L-4476-76 and
	:	C-28115-76
Madison Industries,	:	
	:	
Defendant.	:	SPECIAL ENVIRONMENTAL CASE
-----X	:	
State of New Jersey	:	
Department of Environmental	:	
Protection,	:	
	:	
Plaintiff,	:	
	:	ORDER GRANTING LEAVE
v.	:	TO AMEND COMPLAINT
	:	
CPS Chemical Company, Inc.,	:	
	:	
-----X	:	

THIS MATTER having been opened to the Court by McManimon & Scotland, attorneys for the plaintiff, the City of Perth Amboy, for an Order granting the City of Perth Amboy leave to amend the complaint in this matter and notice having been given to counsel for defendants Madison Industries Inc., CPS Chemical Company Inc. and the Department of Environmental Protection and Energy, and this Court having considered the moving papers and papers filed in opposition, if any, after oral argument and for good cause shown;

IT IS on this ____ day of _____, 1994;

ORDERED that the City of Perth Amboy is granted leave to file an amended complaint in this matter.

Hon. C. Judson Hamlin, J.S.C.